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## **DEPARTMENT OF STATE**

### **22 CFR Parts 22 and 42**

[Public Notice: 7835]

**RIN: 1400-AD06**

### **Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates**

**AGENCY:** Bureau of Consular Affairs, Department of State.

**ACTION:** Interim Final Rule.

**SUMMARY:** This rule amends the Schedule of Fees for consular services (Schedule) for nonimmigrant visa application processing fees, border crossing card application processing fees and immigrant visa application processing fees. The rule increases from \$140 to \$160 the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and Border Crossing Cards (BCCs) for Mexican citizens age 15 and over. The rule also provides amended application processing fees for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas (all of which are also MRVs), as well as amended tiered application processing fees for immigrant visas. Finally, the rule increases from \$14 to \$15 the BCC fee charged to Mexican citizen minors who apply in Mexico, and whose parent or guardian already has a BCC or is applying for one, based on a Congressionally mandated surcharge that took effect since the last adjustment to the Schedule of Fees. The Department of State is adjusting the fees to ensure that sufficient

resources are available to meet the costs of providing consular services in light of the recent fee review's findings that the U.S. government is not fully covering its costs for the processing of these visas under the current fee structure.

**DATES:** This interim final rule becomes effective [INSERT DATE 15 days after PUBLICATION IN THE *FEDERAL REGISTER*]. Written comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested parties may contact the Department by any of the following methods:

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov website at: <http://www.regulations.gov> and searching on the RIN number, 1400-AD06.
- Mail (paper, disk, or CD-ROM): U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs, Suite H1004, 2401 E Street NW Washington, DC 20520.
- E-mail: [fees@state.gov](mailto:fees@state.gov). You must include the RIN (1400-AD06) in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment.

**FOR FURTHER INFORMATION CONTACT:** Special Assistant, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-663-1576, telefax: 202-663-2526; e-mail: [fees@state.gov](mailto:fees@state.gov).

**SUPPLEMENTARY INFORMATION:**

*Background*

The interim final rule makes changes to the Schedule of Fees for consular services of the Department of State's Bureau of Consular Affairs. The Department sets and collects its fees based on the concept of full cost recovery. The Department completed its most recent review of current consular fees and will implement several changes to the Schedule of Fees based on the new fees calculated by the Cost of Service Model (CoSM). Please note that certain "no fee" consular services are included in the Schedule of Fees so that members of the public will be aware of significant consular services provided by the Department at no charge to the recipient of the service.

*What Is the Authority for This Action?*

The Department of State derives the general authority to set fees based on the cost of the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. *See, e.g.*, 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. Other authorities allow the

Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined.

Several statutes address specific fees relating to nonimmigrant visas. For instance, 8 U.S.C. 1351 establishes reciprocity as the basic principle for setting the nonimmigrant visa issuance fee. In addition to the reciprocity issuance fee, section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 108 Stat. 382, as amended, reproduced at 8 U.S.C. 1351 (note), establishes a cost-based application processing fee for MRVs and BCCs. Such fees remain available to the Department until expended. 8 U.S.C. 1351 (note), 1713(d). Furthermore, section 239 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires the Secretary of State to collect a \$1 surcharge (the “Wilberforce surcharge”) on all MRVs and BCCs in addition to the application processing fee; this surcharge must be deposited into the general fund of the Treasury and goes to support anti-trafficking programs. *See* Pub. L. 110-457, 122 Stat. 5044, Title II, section 239, reproduced at 8 U.S.C. 1351 (note). In addition to the \$1 Wilberforce surcharge already included in all nonimmigrant visa application processing fees for MRVs and BCCs, section 501 of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, requires the Secretary of State to collect an additional \$1 surcharge (the “HIV/AIDS/TB/Malaria surcharge”) on all MRVs and BCCs in addition to the application processing fee; this surcharge must be deposited into the Treasury and goes to support programs to combat HIV/AIDS, tuberculosis, and malaria. *See* Pub. L. 110-293, 122 Stat. 2968, Title V, section 501, reproduced at 8 U.S.C. 1351 (note).

Additionally, several statutes address fees for immigrant visa processing. For example, section 636 of the Omnibus Consolidated Appropriations Act of 1997 authorizes the Secretary of State to collect and retain a “Diversity Immigrant Lottery Fee.” *See* Pub. L. 104-208, 110 Stat. 3009-703, div. C, Title VI, section 636, reproduced at 8 U.S.C. 1153 (note). Under this fee authority, the Secretary of State may establish and retain a fee to recover the costs of “allocating visas” described in section 203(c) of the Immigration and Nationality Act (INA) [8 U.S.C. 1153], i.e., running the diversity visa lottery pursuant to INA section 204(a)(1)(I) [8 U.S.C. 1154(a)(1)(I)], and to recover the costs of “processing applications” for diversity immigrant visas submitted by selectees of the lottery. *See* Pub. L. 104-208, 110 Stat. 3009-703, div. C, Title VI, section 636, reproduced at 8 U.S.C. 1153 (note). Accordingly, the “diversity visa lottery fee,” charged to those persons selected by the lottery who subsequently apply for a diversity immigrant visa, incorporates all the costs to the Department of administering the diversity visa lottery program and processing the resulting diversity immigrant visa applications.

Another statute authorizes the Department to collect and retain a surcharge on immigrant visas to help pay for efforts to enhance border security. *See* 8 U.S.C. 1714. While this immigrant visa surcharge was originally frozen statutorily at \$45, subsequent legislation authorized the Department to amend these amounts administratively, provided the resulting surcharge is “reasonably related to the costs of providing services in connection with the activity or item for which the surcharges are charged.” Department of State Authorities Act of 2006, Pub. L. 109-472, 120 Stat. 3554, section 6, reproduced at 8 U.S.C. 1714 (note).

Certain people are exempted by law or regulation from paying specific fees or are expressly made subject to special fee charges by law. These are noted in the text below. They include, for instance, several exemptions from the nonimmigrant visa application processing fee for certain individuals who engage in charitable activities or who qualify for diplomatic visas. *See* 8 U.S.C. 1351; 22 CFR 41.107(c). The costs for these no-fee nonimmigrant visas are currently being recouped in the MRV fee which is based on the costs and volumes for all nonimmigrant visas, both fee and no-fee. Certain Iraqi and Afghan nationals are similarly exempt from paying an immigrant visa application processing fee. *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, div. A, Title XII, section 1244(d), reproduced at 8 U.S.C. 1157 (note); Omnibus Appropriations Act, 2009, Pub. L. 111-8, 123 Stat. 524, div. F, Title VI, section 602(b)(4), reproduced at 8 U.S.C. 1101 (note). The cost of immigrant visas for Iraqi and Afghan nationals is currently not recouped anywhere in the present fee schedule.

While for most consular fees, the funds collected must be deposited into the Treasury, various statutes permit the Department to retain the fee revenue it collects. Among these are the following: (1) the MRV and BCC fees, *see* Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 112 Stat. 2681-50, Title I, section 140(a)(2), reproduced at 8 U.S.C. 1351 (note); (2) the immigrant visa security surcharge, *see* 8 U.S.C. 1714; (3) the diversity visa lottery fee, *see* Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208, div. C, Title VI, section 636, reproduced at 8 U.S.C. 1153 (note); (4) the fee for an affidavit of support, *see* Consolidated Appropriations Act, 2000, Pub. L. 106-113, 113 Stat. 1501, div. A, Title II, section 232(a), reproduced at 8 U.S.C. 1183a (note); and (5) the fee to process requests from participants in the Department's Exchange Visitor Program for a waiver of the two-year

home-residence requirement, *see* 22 U.S.C. 1475e. The Department also has available one-third of total annual revenue collected from fraud prevention and detection fees charged to applicants for H- and L-category visas to pay for H and L visa fraud prevention and detection related activities. 8 U.S.C. 1184(c)(12), 1356(v)(2)(A).

The Department last changed MRV and BCC fees in an interim final rule dated May 20, 2010. *See* Department of State Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates, 22 CFR part 22 [75 FR 28188 (Public Notice 7018)]. This rule changed the non-petition-based nonimmigrant visa (MRV) fee and BCC fee for Mexican citizens age 15 and over from \$131 to \$140, the BCC fee for BCCs issued to certain Mexican citizen minors from \$13 to \$14, the E visa fee from \$131 to \$390, the K visa fee from \$131 to \$350 and the H, L, O, P, Q and R visa fee from \$131 to \$150. Those changes to the Schedule went into effect June 4, 2010. The final rule was published on December 6, 2011 (76 FR 76032).

The Department last changed immigrant visa fees in an interim final rule dated June 28, 2010. *See* Department of State Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates, 22 CFR part 22 [75 FR 36522 (Public Notice 7068)]. A final rule regarding those fees was published on February 2, 2012. *See* 77 FR 5177. This rule established a tiered application processing fee for immigrant visas, based on the cost to the U.S. government of processing that particular category of visa. Those changes to the Schedule went into effect July 13, 2010.

Some fees in the Schedule, including Items 20(a) and (b), 31(a) and (b) and 35(c), are set by the Department of Homeland Security (DHS). These DHS fees were most recently updated by that agency on November 23, 2010, and are subject to change in the future. *See* 75 FR 58962. The

Department lists these DHS fees in the Department Schedule of Fees for cashiering purposes only. The Department has no authority to set DHS fees, which are listed at 8 CFR 103.7(b)(1).

*Why Is the Department Raising the Nonimmigrant Visa and Immigrant Visa Fees at this Time?*

Consistent with OMB Circular A-25 guidelines, the Department recently completed a fee review using its activity-based Cost of Service Model. This review was conducted from August 2010 through December 2011 and provides the basis for updating the Schedule. The results of that review are outlined in this rule.

Similar to the 2009 fee review, upon which the current Schedule is based, costs are generated by an activity-based cost model that takes into account all costs to the U.S. government. Unlike a typical accounting system, which accounts for only traditional general-ledger-type costs such as salaries, supplies, travel and other business expenses, activity-based cost models measure the costs of activities, or processes, and then provide an additional view of costs by the products and services produced by an organization through the identification of the key cost drivers of the activities. Below is a description of Activity-Based Costing from the Supplemental Notice of Proposed Rulemaking published on March 24, 2010, 75 FR 14111.

*Activity-Based Costing Generally*

OMB Circular A-25 states that it is the objective of the United States Government to “(a) ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining; [and] (b) promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits \* \* \*.” OMB Circular A-25, ]



5(a)-(b); see also 31 U.S.C. 9701(b)(2)(A) (agency “may prescribe regulations establishing the charge for a service or thing of value provided by the agency \* \* \* based on \* \* \* the costs to the Government \* \* \*.”). To set prices that are “self-sustaining,” the Department must determine the true cost of providing consular services. Following guidance provided in Statement 4 of OMB's Statement of Federal Accounting Standards (SFFAS), available at <http://www.fasab.gov/pdffiles/sffas-4.pdf>, the Department chose to develop and use an activity-based costing (ABC) model to determine the true cost of the services listed in its Schedule of Fees, both those whose fee the Department proposes to change, as well as those whose fee will remain unchanged from prior years. The Department refers to the specific ABC model that underpins the proposed fees in the above-referenced rules as the “Cost of Service Model” or “CoSM.”

The Government Accountability Office (GAO) defines activity-based costing as a “set of accounting methods used to identify and describe costs and required resources for activities within processes.” Because an organization can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services, ABC models seek to precisely identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as “resource drivers” and “activity drivers.”

Example: Imagine a government agency that has a single facility it uses to prepare and issue a single product--a driver's license. In this simple scenario, every cost associated with that facility (the salaries of employees, the electricity to power the computer terminals, the cost of a blank driver's license, etc.) can be attributed directly to the cost of producing that single item. If that agency wants to ensure that it is charging a “self-sustaining” price for driver's licenses, it only

has to divide its total costs for a given time period by an estimate of the number of driver's licenses to be produced during that same time period.

However, if that agency issues multiple products (driver's licenses, non-driver ID cards, etc.), has employees that work on other activities besides licenses (for example, accepting payment for traffic tickets), and operates out of multiple facilities it shares with other agencies, it becomes much more complex for the agency to determine exactly how much it costs to produce any single product. In those instances, the agency would need to know what percent of time its employees spend on each service and how much of its overhead (rent, utilities, facilities maintenance, etc.) are consumed in delivering each service to determine the cost of producing each of its various products--the driver's license, the non-driver ID card, etc. Using an ABC model would allow the agency to develop those costs.

#### Components of Activity-Based Costing

As noted in SFFAS Statement 4, “activity-based costing has gained broad acceptance by manufacturing and service industries as an effective managerial tool.” SFFAS Statement 4,] 147. There are no “off-the-shelf” ABC models that allow the Department (or any other entity) to simply populate a few data points and generate an answer. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of all the organization's business processes, which, in an entity the size of the Department's Bureau of Consular Affairs, are exceedingly complex. More specifically, ABC models require an organization to:

- Identify all of the activities that are required to produce a particular product or service (“activities”);

- Identify all of the resources consumed (costs) in the course of producing that product or service (“resources”);
- Measure the quantity of resources consumed (“resource driver”); and
- Measure the frequency and intensity of demand placed on activities to produce services (“activity driver”).
- For more information, SFFAS Statement 4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

Although the Department has used a sophisticated and detailed ABC model to set fees for a number of years, in its October 10, 2007, report “Transparent Cost Estimates Needed to Support Passport Execution Fee Decisions,” available at <http://www.gao.gov/products/GAO-08-63>, the GAO asked the Department to expand the sophistication of its cost model by identifying even more discrete activities and modeling a broader array of products and services. To provide this additional detail, the Department launched a multi-year plan to refine the CoSM with the help of a team of experienced outside consultants led by The QED Group, LLC, and including Booz Allen Hamilton, Inc. as a subcontractor. The consultant team was made up of experts in cost modeling capable of providing an objective, outside assessment of costs.

For additional details on an activity-based cost model, see the Supplemental Notice of Proposed Rulemaking published on March 24, 2010, 75 FR 14111.

Although much of the modeling methodology has remained the same between fee reviews, the methodology for capturing Department historical support costs and projected costs has been updated to reflect the change in the Department’s workload. In order to accurately account for

the costs associated with rapidly growing demand in locations such as China and Brazil, the current fee review also incorporates five years of projected costs rather than only two years, included in the 2009 fee review. By using five years of projected costs, the Department better captures the long-term costs of large investments. The new fees represent a weighted average of the annual costs by service for fiscal years 2012-2015. Costs for individual fiscal years were weighted by the projected workload volume for that year. These weighted costs by fiscal year were then added together to generate a single cost per service upon which the fees are determined.

Some of the long-term costs mentioned above include, but are not limited to, Consular Adjudicator Limited Non-career Appointment (LNAs) program costs, consular Locally Employed Staff costs, overseas facility-related costs, better-defined Global Support Strategy (GSS) costs, and more transparent consular-related International Cooperative Administrative Support Services (ICASS) costs. The Department will also add approximately 100 new American consular positions to increase visa-adjudication capacity in China and Brazil in 2012-13. Included in that number will be Mandarin and Portuguese-speaking adjudicators hired in the Consular Adjudicator LNA Program. The Consular Adjudicator LNA Program is a new program to increase the number of visa adjudicators by hiring persons who already have foreign language skills. The first group of 19 LNAs will arrive in China and Brazil in early spring 2012, with a second group to follow in summer 2012. Additional Locally Employed Staff will be hired at posts in China and Brazil to support the additional adjudicators. These new personnel add to the Department's salary, benefits, and overseas support services (e.g. office space, housing, security, and information technology) costs.

In addition to adding personnel in these countries, the Department will also be improving the physical plant for visa applicants and staff. To improve operational efficiency in Missions China and Brazil, the Department plans to expand or remodel existing consular facilities in China and Brazil.

Better defined and increased costs are reflected in the CoSM for the worldwide deployment of both the GSS and ICASS. GSS is a consolidated global contract for purchasing services associated with visa processing such as appointment scheduling, fee collection, offsite data collection, and delivery services. The GSS contract replaces, over a three-year period and through multiple task orders, the current patchwork of user-pays service agreements with a consistent, transparent, and more secure approach to facilitating applicants through the visa process. ICASS is the system by which administrative costs are allocated and paid by various U.S. government agencies to support their U.S. personnel stationed at embassies and consulates around the world. ICASS services include, but are not limited to, such items as computer support, security screening, medical assistance, and accounting services. In addition to the change in support cost and projected cost methodology, the CoSM now breaks out services performed on behalf of other government agencies to provide greater transparency into Department costs. All of the components referenced above have been updated and included in the CoSM to ensure the Department is fully covering its costs. The fees amended in this rule will cover the Department's costs associated with processing the estimated 10.5 million nonimmigrant visas and one million immigrant visas projected for Fiscal Year 2012.

*Nonimmigrant Visa Application and Border Crossing Card Processing Fees*

The Department has determined, based on the CoSM, that the fee for non-petition-based MRV (except E category) and BCC applications, with the exception of the statutorily set \$15 BCC fee for certain Mexican citizen minors, is going from \$140 to \$160. This fee adequately accounts for the average cost to the U.S. government of accepting, processing, adjudicating, and issuing a non-petition-based MRV application. The CoSM arrived at the \$160 figure by taking into account historical and five years of projected costs of worldwide nonimmigrant visa operations, visa workload, and other related costs. This \$160 fee will allow the U.S. government to recover the full cost of processing these visa applications during the anticipated period of this new Schedule, and to comply with its statutory obligation to collect the \$1 Wilberforce Act surcharge and \$1 HIV/AIDS/TB/Malaria surcharge. Those surcharges do not off-set the cost of processing MRVs and BCCs and are in addition to the cost-based fees charged for MRVs and BCCs. The Department rounded to the nearest \$10 (up and down) to make it easier for U.S. embassies and consulates to convert to foreign currencies, which are commonly used to pay these fees.

For all applicants other than those Mexican citizen minors who qualify for the reduced fee BCC, the BCC fee is being raised to \$160 because the document has almost identical processing procedures and is the functional equivalent of the MRV that all other nonimmigrant visa applicants receive.

This cost also includes the unrecovered costs of processing BCCs for certain Mexican citizen minors. That application processing fee is statutorily frozen at \$13, even though such BCCs cost the Department the same amount to process as all other MRVs and BCCs—that is, significantly more than \$13. *See Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681-50, div. A, Title IV, section 410, reproduced at 8 U.S.C. 1351 (note).* Adding the \$1 Wilberforce surcharge and the \$1 HIV/AIDS/TB/Malaria surcharge

brings the total fee for certain Mexican citizen minor BCCs to \$15. The Department's costs beyond \$13 must, by statute, be recovered by charging more for all MRVs, as well as all BCCs not meeting the requirements for the reduced fee. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681-50, div. A, Title IV, section 410(a)(3), reproduced at 8 U.S.C. 1351 (note) (requiring that the Department "shall set the amount of the fee [for processing MRVs and all other BCCs] at a level that will ensure the full recovery by the Department . . . of the costs of processing" *all* MRVs and BCCs, including reduced cost BCCs for qualifying Mexican citizen minors).

The cost to the Department to accept, adjudicate and issue each of the different MRV categories varies. The effort related to some categories such as: E (treaty-traders or treaty-investors); H (temporary workers and trainees); K (fiancé(e)s and certain spouses of U.S. citizens); L (intra-company transferee); O (aliens with extraordinary ability); P (athletes, artists, and entertainers); Q (cultural exchange visitors); and R (aliens in religious occupations) is appreciably higher. Each of those visa categories requires a review of extensive documentation and a more in-depth applicant interview than BCCs and other categories of MRVs. As in the previous fee rule, the Department has again concluded that it is more equitable to those applying for BCCs and other categories of MRVs, for which such extensive review is not necessary, to continue collecting separate fees that more accurately reflect the cost of processing each type of visa. *See* 74 FR 66076 (Public Notice 6851). Therefore, this rule amends the following fees for those categories to correspond to projected cost figures for that visa category, as determined by the CoSM and incorporating the \$1 Wilberforce surcharge and \$1 HIV/AIDS/TB/Malaria surcharge (discussed above in greater detail):

H, L, O, P, Q and R: increasing from \$150 to \$190

E: decreasing from \$390 to \$270

K: decreasing from \$350 to \$240

Again, the Department rounded these fees to the nearest \$10 for the ease of converting to foreign currencies, which are most often used to pay the fee.

#### *Immigrant Visa Application Processing Fees*

In addition to the nonimmigrant fee modifications referenced above, the Department is adjusting the four-tiered immigrant visa application processing fees based on CoSM calculation for each discrete category of immigrant visa, as applications for certain categories cost more to process than others. Accordingly, the application processing fee for a Family-Based Visa (immediate relative and family preference, processed on the basis of an I-130, I-600 or I-800 petition) will be decreasing from \$330 to \$230. The application processing fee for an Employment-Based Visa (processed on the basis of an I-140 petition) will be decreasing from \$720 to \$405. Other Immigrant Visa applications (including for I-360 self-petitioners, special immigrant visa applicants and all others) will have a fee of \$220, formerly \$305. As noted above, certain qualifying Iraqi and Afghan Special Immigrant Visa applicants are statutorily exempt from paying an application processing fee. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, div. A, Title XII, section 1244(d), reproduced at 8 U.S.C. 1157 (note); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, div. F, Title VI, section 602(b)(4), reproduced at 8 U.S.C. 1101 (note). Please note that the Immigrant Visa Security Surcharge of \$75 is embedded in the immigrant visa application processing fee and will no longer be charged as a standalone fee or set forth as a separate fee on the Schedule.

#### *Immigrant Visa Security Surcharge*



The Department is increasing the Immigrant Visa Security Surcharge, which is applicable to all applicants except those persons who are statutorily exempted from paying fees, from \$74 to \$75 for ease of converting to foreign currencies. The Immigrant Visa Security Surcharge covers security costs as determined by the CoSM to be associated with providing enhanced border security. *See* 8 U.S.C. 1714 and Department of State Authorities Act of 2006, Pub. L. 109-472, 120 Stat. 3554, section 6, reproduced at 8 U.S.C. 1714 (note). Please note that the Immigrant Visa Security Surcharge of \$75 is embedded in the aforementioned immigrant visa application processing fee and will no longer be charged as a standalone fee or set forth as a separate fee on the Schedule.

*Diversity Visa Lottery Fee*

The Department is decreasing the fee paid by Diversity Visa Lottery selectees who apply for immigrant visas from \$440 to \$330 based on CoSM calculations for a FY 2012 workload projection of approximately 100,000 applications. The Department has authority to collect and retain a fee, known as the “Diversity Visa Lottery fee,” to recover (a) the costs of allocating diversity immigrant visas described in INA section 203(c) [8 U.S.C. 1153], through the diversity visa lottery program, set forth in INA § 204(a)(1)(I) [8 U.S.C. § 1154(a)(1)(I)], and (b) the costs of processing all applications for diversity immigrant visas (i.e., “Diversity Visas”) submitted by selectees of the diversity visa lottery. Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104-208, 110 Stat. 3009-703, div. C, Title VI, section 636, reproduced at 8 U.S.C. 1153 (note). The Department collects this fee only from those persons who, having been selected through the lottery process, are applying for a Diversity Visa. The Diversity Visa Lottery fee encompasses the costs of processing the immigrant visa application and the embedded immigrant

visa security surcharge. Accordingly, the Department does not charge the separate Other Immigrant Visa Application Processing Fee or Immigrant Visa Security Surcharge to Diversity Visa applicants.

Thus, 22 CFR 42.33(i) is amended to provide that the consular officer must collect from each person who is selected by the Diversity Visa Lottery program and who applies for a Diversity Visa the Diversity Visa Lottery fee as prescribed by the Secretary of State and set forth in the Schedule of Fees found at 22 CFR 22.1.

#### *Determining Returning Resident Status*

The CoSM found that determining the status of people who claim to be lawful permanent residents of the United States, but do not have documentation to prove this fact, has become less costly due to advances in automation making it easier to verify U.S. immigration status. As such, the Department will lower the fee from \$380 to \$275.

#### *Transportation Letter for Lawful Permanent Residents of the United States*

The Department is removing the issuance of Transportation Letters for Lawful Permanent Residents from the Schedule. The Department is working with DHS on procedures and fees relating to this service.

#### *When Will the Department of State Implement this Interim Final Rule?*

The Department intends to implement this interim final rule, and initiate collection of the fees set forth herein, effective [insert date 15 days after publication of this rule in the Federal Register].

## **REGULATORY FINDINGS**

### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule, with a 60-day provision for post-promulgation comments and with an effective date less than 30 days from the date of publication, based on the “good cause” exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Delaying implementation of this rule would be contrary to the public interest because the fees in this rule fund consular services that are critical to national security, including screening visa applicants. In addition, the Department will not be able to sustain the anticipated growth in consular overseas operations if these fees are not effective within 15 days of publication.

### *Regulatory Flexibility Act*

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule adjusts the application processing fees for nonimmigrant and immigrant visas. Although the issuance of some of these visas is contingent upon approval by DHS of a petition filed by a United States company with DHS, and these companies pay a fee to DHS to cover the processing of the petition, the visa itself is sought and paid for by an individual foreign national overseas who seeks to come to the United States. The amount of the petition fees that are paid

by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. While small entities may cover or reimburse employees for application processing fees, the exact number of such entities that do so is unknown. The adjustment in petition fees accounts for only seven percent of the total nonimmigrant workload expected in FY 2012; therefore, the \$40 increase in the application processing fee for Employment-Based nonimmigrant visas is not likely to have a significant economic impact on the small entities that choose to reimburse the applicant for the visa fee.

Additionally, the Department of State does not track applications for Employment-Based visas by the size and nature of the petitioning businesses, and therefore cannot identify the share of this impact on the small businesses versus large businesses. However, the estimated impact of the decrease in the application processing fee for the 27,149 total Employment-Based visa applications expected to be processed by the Department of State annually in FY 2012 is approximately \$8.5 million dollars. (Note: DHS processes domestic adjustment of status applications for approximately 90 percent of all Employment-Based immigrants; cases processed domestically do not pay Department of State fees.) Since this impact is well below the \$100 million threshold and only a portion of these 27,179 applications would impact small businesses, the State Department believes this rule does not have a significant impact on a substantial number of small entities.

#### *Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed

necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2) Pursuant to 5 U.S.C. 808(2), it is effective 15 days after the date of publication.

*Executive Order 12866*

This rule is considered by the Department of State to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review.

Accordingly, this rule has been submitted to OMB for review.

This rule is necessary in light of the Department of State’s CoSM finding that the cost of processing nonimmigrant visas has increased since the fee was last amended in 2010. The Department is setting the nonimmigrant visa fees in accordance with 31 U.S.C. 9701 and other applicable legal authority, as described in detail above. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) (“The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government.”). This regulation sets the fees for nonimmigrant visas at the amount required to recover the costs associated with providing this service to foreign nationals.

Details of the proposed fee changes are as follows:

Item No.	Proposed Fee	Current Fee	Change in Fee	Percentage Increase	Estimated Annual Number of Applications \\1\\	Estimated Change in Annual Fees Collected \\2\\
<b>SCHEDULE OF FEES FOR CONSULAR SERVICES</b>						
* * * * *						
<b>NONIMMIGRANT VISA SERVICES</b>						
21. Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person):						
(a) Non-petition- based nonimmigrant visa (except E category)	\$160	\$140	\$20	14%	8,844,709	\$176,894,180
(b) H, L, O, P, Q and R category nonimmigrant visa	\$190	\$150	\$40	27%	757,954	\$30,318,160

<b>Item No.</b>	<b>Proposed Fee</b>	<b>Current Fee</b>	<b>Change in Fee</b>	<b>Percentage Increase</b>	<b>Estimated Annual Number of Applications  \1\</b>	<b>Estimated Change in Annual Fees Collected  \2\</b>
(c) E category nonimmigrant visa	\$270	\$390	(\$120)	-31%	50,954	-\$6,114,480
(d) K category nonimmigrant visa	\$240	\$350	(\$110)	-31%	53,418	-\$5,875,980
(e) Border crossing card – age 15 and over (10- year validity)	\$160	\$140	\$20	14%	585,065	\$11,701,294
(f) Border crossing card – under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid for 10 years or until the	\$15	\$14	\$1	7%	238,971	\$238,971

applicant reaches age 15, whichever is earlier)						
<b>IMMIGRANT AND SPECIAL VISA SERVICES</b>						
32. Immigrant Visa Application Processing Fee (per person)						
(a) Immediate relative and family preference applications	\$230	\$330	(\$100)	-30%	925,450	-\$92,545,000
(b) Employment- based applications	\$405	\$720	(\$315)	-44%	27,149	-\$8,551,935
<b>Item No.</b>	<b>Proposed Fee</b>	<b>Current Fee</b>	<b>Change in Fee</b>	<b>Percentage Increase</b>	<b>Estimated Annual Number of Applications  \1\</b>	<b>Estimated Change in Annual Fees Collected  \2\</b>



(c) Other immigrant visa applications  (including I-360 self-petitioners and special immigrant visa applicants)	\$220	\$305	(\$85)	-28%	139	-\$11,815
33. Diversity Visa Lottery fee (per person applying as a result of the lottery program)	\$330	\$440	(\$110)	-25%	100,173	-\$11,019,030
35. Special Visa Services:						
(a) Determining Returning Resident Status	\$275	\$380	(\$105)	-28%	2,099	-\$220,395
<b>Total</b>						\$948,139.701
* * * * *						

\1\ Based on projected FY 2012 workload.

\2\ Using projected FY 2012 workload to generate projections.

Historically, nonimmigrant visa workload has increased year to year at approximately 11 percent. The Department anticipates that with the current state of the global economy, demand will be approximately 10.5 million in Fiscal Year 2012. With regard to the economic impact as a whole, the more than 93 percent of nonimmigrant visa applications that are not petition-based are sought by and paid for entirely by foreign national applicants. The revenue increases resulting from those fees should not be considered to have a direct cost impact on the domestic economy.

With regard to immigrant visas, many categories are numerically capped by law; these caps limit workload and keep current demand fairly stable. In FY 2011, the Department issued 10.8 percent of all available immigrant visas in Employment-Based categories (capped at 140,000 including adjustments of status processed domestically by the DHS). In FY 2011, the Department issued 96.8 percent of the immigrant visas available under the Diversity Visa program (capped at 50,000 including adjustments of status processed domestically by DHS). Also in FY 2011, the Department issued 87.3 percent of the immigrant visas available for Family-Preference categories (capped at 226,000 including adjustments of status processed domestically by DHS). When fewer visas were issued than were available under the numerical cap, it was generally due to administrative processing issues rather than lack of demand. There are nearly 4.7 million applicants currently awaiting numerically controlled visas, sufficient to fill more than 12 years' workload at the current annual caps and this does not take into account applicants who would be adjusting status in the United States. It is reasonable to expect that the immigrant visa workload for FY 2012 and FY 2013 will remain about the same as FY 2011. Please note that these estimates do not take into account variables that the Department cannot predict at this time, such as legislative changes.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Orders 12372 and 13132*

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

*Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements.

**List of Subjects**

**22 CFR Part 22**

Passports and visas.

**22 CFR Part 42**

Immigration, Passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR parts 22 and 42 are amended as follows:

**PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE**

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

2. Section 22.1 is amended in the table by:

- a. Adding entry 20 and revising entries 21 through 25 under “Nonimmigrant Visa Services; and
- b. Revising entries 31 through 35 under “Immigrant and Special Visa Services.”

The addition and revisions read as follows:

**§ 22.1 Schedule of Fees.**

### Schedule of Fees for Consular Services

Item No.	Fee
* * * * *	
<b>Nonimmigrant Visa Services</b>	
20. Filing Nonimmigrant Visa Petition Based on Blanket L Petition (collected for USCIS and subject to change)	For fee amount, see 8 CFR 103.7(b)(1)
(a) Petition for a nonimmigrant worker (Form I-129)	For fee amount, see 8 CFR103.7(b)(1)
(b) Nonimmigrant petition based on blanket L petition	For fee amount, see 8 CFR 103.7(b)(1)
21. Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person):	
(a) Non-petition-based nonimmigrant visa (except E category)	\$160
(b) H, L, O, P, Q and R category nonimmigrant visa	\$190
(c) E category nonimmigrant visa	\$270
(d) K category (fiancé) nonimmigrant visa	\$240
(e) Border crossing card - age 15 and over (10 year validity)	\$160

(f) Border crossing card - under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	\$15
22. EXEMPTIONS from Nonimmigrant Visa Application Processing Fee:	
(a) Applicants for A, G, C-3, NATO and diplomatic visas as defined in 22 C.F.R. 41.26	NO FEE
(b) Applicants for J visas participating in official U.S. Government sponsored educational and cultural exchanges	NO FEE
(c) Replacement machine-readable visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant	NO FEE
(d) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families	NO FEE
(e) Applicants traveling to provide charitable services as determined by the Department	NO FEE
(f) U.S. government employees traveling on official business	NO FEE

(g) A parent, sibling, spouse, or child of a U.S. government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. government employee critically injured in the line of duty for visitation during emergency treatment and convalescence	NO FEE
23. Nonimmigrant Visa Issuance Fee, including Border-Crossing Cards (Reciprocity Fee)	RECIPROCAL
24. EXEMPTIONS from Nonimmigrant Visa Issuance Fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under item 22(a); and their immediate families	NO FEE
(b) An applicant transiting to and from the United Nations Headquarters	NO FEE
(c) An applicant participating in a U.S. government sponsored program	NO FEE
(d) An applicant traveling to provide charitable	NO FEE

services as determined by the Department	
25. Fraud Prevention and Detection Fee for Visa  Applicant included in L Blanket Petition (principal applicant only)	\$500
* * * * *	
<b>Immigrant and Special Visa Services</b>	
31. Filing Immigrant Visa Petition (collected for USCIS and subject to change)	
(a) Petition to classify status of alien relative for issuance of immigrant Visa	For fee amount,  see 8 CFR  103.7(b)(1)
(b) Petition to classify orphan as an immediate relative	For fee amount,  see 8 CFR  103.7(b)(1)
32. Immigrant Visa Application Processing Fee (per person)	
(a) Immediate relative and family preference applications	\$230
(b) Employment-based applications	\$405
(c) Other immigrant visa applications (including I-360 self-petitioners and special immigrant visa applicants)	\$220



(d) Certain Iraqi and Afghan special immigrant visa applications	NO FEE
33. Diversity Visa Lottery Fee (per person applying as a result of the lottery program)	\$330
34. Affidavit of Support Review (only when reviewed domestically)	\$88
35. Special Visa Services:	
(a) Determining Returning Resident Status	\$275
(b) Waiver of two year residency requirement	\$215
(c) Waiver of immigrant visa ineligibility (collected for USCIS and subject to change)	For fee amount, see 8 CFR 103.7(b)(1)
(d) Refugee or significant public benefit parole case processing	NO FEE
* * * * *	

**PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE  
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

3. The authority citation continues to read as follows:

8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry

Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279.

4. Revise § 42.33(i) to read as follows:

**§ 42.33 Diversity immigrants.**

\* \* \* \* \*

(i) *Diversity Visa Lottery fee.* Consular officers shall collect, or ensure the collection of, the Diversity Visa Lottery fee from those persons who apply for a diversity immigrant visa, described in INA 203(c), after being selected by the diversity visa lottery program. The Diversity Visa Lottery fee, as prescribed by the Secretary of State, is set forth in the Schedule of Fees, 22 CFR 22.1.

March 22, 2012

(Date)

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Patrick F. Kennedy,

Under Secretary of State for Management,

U.S. Department of State.

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